

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **DAVID CHARLES SOLOTKY**
14 **1880 San Leandro Boulevard**
15 **San Leandro, CA 94577**

16 **1255 Partrick Road**
17 **Napa, CA 94558**

18 **Certified Public Accountant Certificate**
19 **No. CPA 59554**

20 Respondent.

Case No. AC-2012-25

OAH No. 2012041006

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

21 **FINDINGS OF FACT**

22 1. On or about March 21, 2012, Complainant Patti Bowers, in her official capacity as
23 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
24 filed Accusation No. AC-2012-25 against David Charles Solotky (Respondent) before the
25 California Board of Accountancy. (Accusation attached as Exhibit A.)

26 2. On or about August 1, 1991, the California Board of Accountancy (CBA) issued
27 Certified Public Accountant Certificate No. CPA 59554 to Respondent. The Certified Public
28 Accountant Certificate was in full force and effect at all times relevant to the charges brought in
Accusation No. AC-2012-25. Certificate No. CPA 59554 expired on August 31, 2012, and has

1 not been renewed. The Board has jurisdiction to adjudicate this case per Business & Professions
2 Code section 5109.

3 3. On or about March 27, 2012, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. AC-2012-25, Statement to Respondent, Notice of Defense,
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
6 and 11507.7) at Respondent's address of record which, pursuant to California Code of
7 Regulations, title 16, section 3, is required to be reported and maintained with the CBA.
8 Respondent's address of record was and is:

9 1880 San Leandro Boulevard
10 San Leandro, CA 94577.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about April 6, 2012, Respondent signed and returned a Notice of Defense,
15 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
16 address of record and it informed him that an administrative hearing in this matter was scheduled
17 for September 19, 2012. Respondent failed to appear at that hearing.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

23 7. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

26 8. Pursuant to its authority under Government Code section 11520, the CBA finds
27 Respondent is in default. The CBA will take action without further hearing and, based on the
28

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the CBA's offices regarding the allegations contained in Accusation No. AC-2012-25, finds
4 that the charges and allegations in Accusation No. AC-2012-25, are separately and severally,
5 found to be true and correct by clear and convincing evidence.

6 9. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$11,089.05 as of September 10, 2012.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent David Charles Solotky has
11 subjected his Certified Public Accountant Certificate, No. CPA 59554, to discipline.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The California Board of Accountancy is authorized to revoke Respondent's Certified
14 Public Accountant Certificate based upon the following violations alleged in the Accusation
15 which are supported by the evidence contained in the Default Decision Evidence Packet in this
16 case:

17 a. In violation of Business and Professions Code ("Code") section 5100(c), Respondent
18 failed repeatedly to properly file extensions for 2009 tax returns for a partnership and an S
19 Corporation which resulted in the returns being filed late and in IRS penalties being assessed for
20 Respondent's client, C.L.A, as described in paragraph 14 of the Accusation.

21 b. In violation of Business and Professions Code section 5100(i) and Probate Code
22 sections 16060 and 16062(a), in that Respondent breached his fiduciary responsibility as the
23 Independent Special Trustee for two Qualified Chapter "S" Trusts by failing to provide requested
24 accounting and bank account information held by two trusts as described in paragraphs 14 and 16
25 of the Accusation.

26 c. In violation of Code section 5100(g), Respondent failed to comply with Title 16,
27 California Code of Regulations, section 52, in that Respondent failed to respond to the Board's
28 inquiries, including letters, a subpoena and phone calls, as described in paragraphs 13-14 of the

1 Accusation.

2 d. In violation of sections 5100(g) and 5037(b) of the Code, and Title 16, California
3 Code of Regulations, section 68, Respondent failed to provide client files and documentation
4 upon written and verbal requests of clients, as described in paragraphs 13-14 of the Accusation.

5 e. In violation of Code section 5063.3(a) and Title 16, California Code of Regulations,
6 section 54.1, pursuant to section 5100(g), in that on or about October 21, 2011, during a Board
7 visit to Respondent's office, Board staff observed client names, social security numbers and
8 addresses exposed and visible to anyone who might look through Respondent's office windows.


9 ORDER

10 IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA 59554,
11 heretofore issued to Respondent David Charles Solotky, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective on December 26, 2012.

17 It is so ORDERED November 26, 2012.

18
19 
20 FOR THE CALIFORNIA BOARD OF
21 ACCOUNTANCY
22 DEPARTMENT OF CONSUMER AFFAIRS

23 40592997.DOC
DOJ Matter ID:SF2012400856

24 Attachment:
25 Exhibit A: Accusation
26
27
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 MICHAEL B. FRANKLIN
Deputy Attorney General
4 State Bar No. 136524
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5622
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2012-25

11 **DAVID CHARLES SOLOTKY**
12 1880 San Leandro Boulevard
San Leandro, CA 94577
13 **Certified Public Accountant Certificate No.**
CPA 59554

A C C U S A T I O N

14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

18 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
19 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

20 2. On or about August 1, 1991, the California Board of Accountancy issued Certified
21 Public Accountant Certificate Number CPA 59554 to David Charles Solotky (Respondent). The
22 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
23 charges brought herein and will expire on August 31, 2012, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the California Board of Accountancy (CBA),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.

28 4. Section 5100 states:

1 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
2 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
3 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
4 conduct that includes, but is not limited to, one or any combination of the following causes:

5 ...

6 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or
7 different engagements, for the same or different clients, or any combination of engagements or
8 clients, each resulting in a violation of applicable professional standards that indicate a lack of
9 competency in the practice of public accountancy or in the performance of the bookkeeping
10 operations described in Section 5052.

11 ...

12 (g) Willful violation of this chapter or any rule or regulation promulgated by the board
13 under the authority granted under this chapter.

14 ...

15 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

16 ... "

17 5. Section 5037 states:

18 "...

19 (b) A licensee shall furnish to his or her client or former client, upon request and reasonable
20 notice:

21 (1) A copy of the licensee's working papers, to the extent that those working papers include
22 records that would ordinarily constitute part of the client's records and are not otherwise available
23 to the client.

24 (2) Any accounting or other records belonging to, or obtained from or on behalf of, the
25 client which the licensee removed from the client's premises or received for the client's account.
26 The licensee may make and retain copies of documents of the client when they form the basis for
27 work done by him or her.

28 ... "

1 6. Section 5063.3 states:

2 "(a) No confidential information obtained by a licensee, in his or her professional capacity,
3 concerning a client or a prospective client shall be disclosed by the licensee without the written
4 permission of the client or prospective client, except the following:

5 ... "

6 7. Title 16, California Code of Regulations, section 52 states:

7 "(a) A licensee shall respond to any inquiry by the Board or its appointed representatives
8 within 30 days. The response shall include making available all files, working papers and other
9 documents requested.

10 (b) A licensee shall respond to any subpoena issued by the Board or its executive officer or
11 the assistant executive officer in the absence of the executive officer within 30 days and in
12 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

13 ... "

14 8. Title 16, California Code of Regulations, section 54.1 states:

15 "(a) No confidential information obtained by a licensee, in his or her professional capacity,
16 concerning a client or a prospective client shall be disclosed by the licensee without the written
17 permission of the client or prospective client, except for the following:

18 ... "

19 9. Title 16, California Code of Regulations, section 68 states:

20 "A licensee, after demand by or on behalf of a client, for books, records or other data,
21 whether in written or machine sensible form, that are the client's records shall not retain such
22 records. Unpaid fees do not constitute justification for retention of client records.

23 Although, in general the accountant's working papers are the property of the licensee, if
24 such working papers include records which would ordinarily constitute part of the client's books
25 and records and are not otherwise available to the client, then the information on those working
26 papers must be treated the same as if it were part of the client's books and records."

27 10. California Probate Code section 16060 states:

28 "The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust

1 and its administration."

2 11. California Probate Code section 16062 states:

3 "(a) Except as otherwise provided in this section and in Section 16064, the trustee shall
4 account at least annually, at the termination of the trust, and upon a change of trustee, to each
5 beneficiary to whom income or principal is required or authorized in the trustee's discretion to be
6 currently distributed.

7 ..."

8 **COST RECOVERY**

9 12. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
14 The board shall not recover costs incurred at the administrative hearing. "

15 **CASE NO. A-2011-731**

16 13. On or about February 24, 2011, client S.P.¹ provided Respondent with tax
17 information in order for Respondent to prepare tax returns. S.P. made repeated requests to
18 Respondent for the completed tax returns [a trust return and a partnership return] but Respondent
19 failed to respond. S.P. then made repeated requests to Respondent to return the paperwork,
20 including a copy of an extension that had allegedly been filed, so that S.P. could have someone
21 else prepare the returns. Respondent failed to respond to S.P. and failed to return the paperwork.

22 On or about May 16, 2011, S.P. filed a complaint with CBA. CBA staff sent Respondent a
23 letter on May 20, 2011. This letter requested that Respondent return the paperwork to S.P. and
24 that Respondent needed to respond to CBA regarding this complaint. Respondent failed to
25 respond to CBA and failed to return the paperwork to S.P.

26
27 _____
28 ¹ Initials are used to protect confidentiality. Names will be provided in discovery.

1 On July 25, 2011, CBA staff sent a subpoena to Respondent requesting that Respondent
2 provide: (1) a written response to the complaint; (2) an explanation for why Respondent has
3 failed to return S.P.'s records; and (3) a copy of the engagement letter or an explanation of the
4 services Respondent was to perform for S.P. The subpoena ordered Respondent to respond by
5 August 25, 2011. Respondent failed to respond to CBA and failed to return the paperwork to S.P.

6 On August 29, 2011, CBA staff sent a letter to Respondent informing him that the
7 investigation was nearing completion and advising him of possible violations. This letter also
8 inquired if Respondent desired an Investigative Hearing prior to the case being sent to the
9 Attorney General's office for discipline. Respondent again failed to respond to CBA and failed to
10 return the paperwork to S.P.

11 On September 16, 2011, S.P received a penalty notice from the Internal Revenue Service
12 (IRS) for filing the partnership tax return late.

13 On September 20, 2011, CBA staff called Respondent at his new place of employment and
14 left a message for Respondent requesting a return phone call. Respondent failed to respond to the
15 voice mail left for him by CBA staff.

16 **CASE NO. A-2012-15**

17 14. On or about December 28, 2010, client C.R.A. wrote to Respondent to inform him
18 that as of January 1, 2011, his father, C.L.A., would no longer be utilizing Respondent's services
19 as a CPA. This letter cited as reasons for the change the fact that Respondent repeatedly failed to
20 respond to tax related inquiries. The letter requested that records be returned and that Respondent
21 provide a trust accounting. Respondent replied by e-mail on or about February 11, 2011, that he
22 would provide the requested records. Respondent failed to provide the requested records. In
23 addition, C.R.A. indicated in his complaint to the CBA that Respondent also failed to properly
24 file extensions for 2009 tax returns on behalf of C.L.A. for a partnership and a S Corporation,
25 which resulted in both returns being late and in IRS penalties being assessed.

26 On or about November 19, 2001, The 2001 Arolla Family Irrevocable Trust was created.
27 Section 5.1 of The 2001 Arolla Family Irrevocable Trust provides information regarding
28 Qualified Subchapter "S" Trusts and mentions an "Independent Special Trustee." Section 8.1 of

1 The 2001 Arolla Family Irrevocable Trust outlines the functions of the "Independent Special
2 Trustee." Section 8.2 of The 2001 Arolla Family Irrevocable Trust appoints Respondent as the
3 "Independent Special Trustee." Respondent signed The 2001 Arolla Family Irrevocable Trust as
4 "Independent Special Trustee" on November 19, 2001.

5 On or about March 13, 2011, C.R.A.'s successor CPA sent Respondent an e-mail
6 requesting certain records and bank account information related to the two Qualified Subchapter
7 "S" Trusts for which Respondent served as the Independent Special Trustee. Respondent failed
8 to respond to the e-mail and failed to provide any of the requested records or information.

9 On July 25, 2011, CBA staff sent a subpoena to Respondent requesting that Respondent
10 provide: (1) a written response as to why he failed to provide C.R.A. and/or the successor CPA
11 the requested documents and files; (2) a written response as to why he has failed to provide C.R.A.
12 the requested accounting for the two Qualified Subchapter "S" Trusts for which Respondent
13 served as the Independent Special Trustee; and (3) a written explanation as to why the 2009 tax
14 returns were filed late which resulted in IRS penalties that had to be paid by the taxpayer.
15 Respondent failed to respond to CBA and failed to return the paperwork to C.R.A.

16 On August 29, 2011, CBA staff sent a letter to Respondent informing him that the
17 investigation was nearing completion and advising him of possible violations. This letter also
18 inquired if Respondent desired an Investigative Hearing prior to the case being sent to the
19 Attorney General's office for discipline. Respondent again failed to respond to CBA and failed to
20 return the paperwork to C.R.A.

21 On September 20, 2011, CBA staff called Respondent at his new place of employment and
22 left a message for Respondent requesting a return phone call. Respondent failed to respond to the
23 voice mail left for him by CBA staff.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Repeated Acts of Negligence)**

26 15. Respondent failed to properly file extensions for 2009 tax returns for a partnership
27 and an S Corporation, which resulted in the returns being filed late and in IRS penalties being
28 assessed, for client C.L.A. as described in paragraph 14 above. This conduct constitutes repeated

1 acts of negligence in violation of Business and Professions Code section 5100(c).

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Breach of Fiduciary Responsibility)**

4 16. Respondent breached his fiduciary responsibility as the Independent Special Trustee
5 for the two Qualified Subchapter "S" Trusts by failing to provide requested accounting and bank
6 account information held by the two trusts as described in paragraph 14 above. This conduct
7 constitutes a violation of Business and Professions Code section 5100(i) and Probate Code
8 sections 16060 and 16062(a).

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Respond to Board Inquiry)**

11 17. Respondent's license is subject to discipline under Code section 5100(g), in that
12 Respondent failed to comply with Title 16, California Code of Regulations, section 52, in that
13 Respondent failed to respond to the Board's inquiries, including letters, a subpoena and phone
14 calls, as described above in paragraphs 13-14.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Return Client Records)**

17 18. Respondent's license is subject to discipline under Code section 5100(g), for failure
18 to comply with Code section 5037(b) and Title 16, California Code of Regulations, section 68, in
19 that Respondent failed to provide client files and documentation upon written and verbal requests
20 of his clients as described above in paragraphs 13-14.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Disclosure of Confidential Information)**

23 19. Respondent's license is subject to discipline under Code section 5100(g), for failure
24 to comply with Code section 5063.3(a) and Title 16, California Code of Regulations, section 54.1,
25 in that Respondent disclosed confidential information as follows:

26 A. On October 21, 2011, CBA staff visited Respondent's office. CBA staff observed client
27 paperwork exposed to anyone that might look through the office windows. Client names, social
28 security numbers and addresses were visible.

1 PRAYER

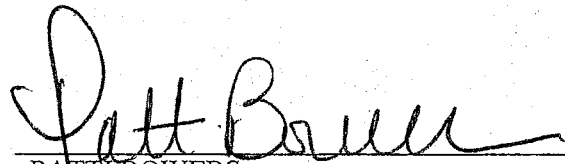
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
5 Accountant Certificate Number CPA 59554, issued to David Charles Solotky

6 2. Ordering David Charles Solotky to pay the California Board of Accountancy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 5107;

9 3. Taking such other and further action as deemed necessary and proper.

10
11
12 DATED: 3/21/2012



13 PATTI BOWERS
14 Executive Officer
15 California Board of Accountancy
16 Department of Consumer Affairs
17 State of California
18 Complainant

17 SF2012400856
18 40535225.doc